

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DONNA ESHGHI)	
Claimant)	
VS.)	
)	Docket Nos. 204,375 & 204,376
ST. JOSEPH MEDICAL CENTER AND)	
RIVERSIDE HOSPITAL)	
Respondents)	
AND)	
)	
SELF-INSURED)	
PHICO INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Jon L. Frobish on June 18, 1999. The Appeals Board heard oral argument on October 27, 1999.

APPEARANCES

James R. Roth of Wichita, Kansas, appeared on behalf of the claimant. Scott J. Mann of Hutchinson, Kansas, appeared on behalf of Riverside Hospital and its insurance carrier, Phico Insurance Company. Vaughn Burkholder of Wichita, Kansas, appeared on behalf of St. Joseph Medical Center, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant alleges she contracted hepatitis C in the course of her duties as an OB-GYN nurse for either St. Joseph Medical Center or Riverside Hospital. The Administrative Law Judge found claimant failed to prove that the hepatitis C arose out of or in the course of employment for either respondent. Claimant appeals the finding by the ALJ and asks that the Board make findings on the nature and extent of claimant's disability. Both

respondents ask the Board to affirm the decision by the ALJ. Both respondents also contend claimant should be denied benefits for the additional reason that she did not give timely notice.

If the Board finds claimant's injury or disease arose out of and in the course of employment, claimant and St. Joseph ask the Board to determine the remaining issues of notice and nature and extent of disability. Riverside, on the other hand, asks that determination of other issues be made on remand to the ALJ.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After review of the record and consideration of the arguments, the Appeals Board concludes the Award should be affirmed.

Findings of Fact

1. Claimant began working for St. Joseph Medical Center as a labor and delivery nurse in July 1984. She became a registered nurse in 1985. Claimant started working at Riverside Hospital in June of 1994 and, while working at Riverside, continued to work part time, 2 to 3 hours per month, at St. Joseph.

2. In May or June of 1995, claimant began noticing that she was tired all the time and was having headaches as well as general aches and pains. At that time claimant was taking Accutane for acne. She had been doing so for six to nine months. This medication increases cholesterol and claimant had been told she should have her cholesterol checked. When claimant began feeling ill, she decided to have the cholesterol test and other lab work done. Tests done in July of 1995 revealed increased liver enzymes. Further testing was positive of hepatitis C and Dr. Mila Lee Holmes, claimant's personal physician, took claimant off work August 1, 1995. Dr. Holmes also referred claimant to Dr. Richard M. Skibba who in turn referred claimant to Dr. Hewitt C. Goodpasture. Dr. Goodpasture became claimant's treating physician for the hepatitis C.

Enzyme studies done in July and August of 1995 showed levels as high as 300, five to six times normal. In some patients the virus clears the system and Dr. Goodpasture monitored claimant to determine if it might do so in her case. By January of 1996 he determined that it was not clearing and started her on a regime of interferon treatment. The interferon treatment did not reduce enzyme levels to normal and Dr. Goodpasture referred claimant to Dr. Norton J. Greenberger at Kansas University Medical Center. At KU, a different treatment protocol was tried. Claimant responded only partially and in December of 1997, this second protocol was discontinued. Claimant's liver enzymes remained at above normal levels but claimant felt better when off the medication.

3. Claimant reported the hepatitis C to her supervisor at Riverside the day it was diagnosed. She reported it to St. Joseph approximately one week later.

4. At the time the hepatitis C was diagnosed, claimant had been taking Tylenol and aspirin for the headaches. She testified she otherwise hardly ever took these medicines. Dr. Holmes advised her to stop taking them. Claimant also took Prozac beginning approximately in March of 1995.

5. Claimant had not had sexual relations since 1993 and had not had any blood transfusions. Claimant initially testified she had never had a dirty needle stick at Riverside. Claimant testified she had sometime had cuts on her hand and had worked around blood. Claimant assisted with approximately thirty deliveries per month.

At her deposition in September 1996, claimant testified that when she returned to work, after being diagnosed with hepatitis C, she was drawing a lab from a patient and remembered an earlier cut while taking a needle out of a vacutainer. She believes this occurred in April or May of 1995, shortly before she was diagnosed. She originally thought she might have cut herself on the plastic. She now believes she was pushing on the needle and was stuck by the needle.

6. Claimant reported three needle sticks during her employment at St. Joseph. Those were on February 6, 1990; March 31, 1990; and September 21, 1992.

7. Claimant initially denied any sexual relations other than with her husband. She later acknowledged two before marriage and one partner in 1993 during her marriage. Claimant was not aware that her husband had had sexual relations with others during their marriage but acknowledged that he might have.

8. Claimant has never used intravenous drugs and has not had sexual relations with anyone who, to her knowledge, used intravenous drugs.

9. In August of 1996 claimant underwent a liver biopsy. The report from that biopsy indicated that there was liver damage, including mild portal fibrosis.

10. Three physicians testified about how claimant most likely contracted hepatitis C, Dr. Goodpasture, Dr. David L. Smith, Jr., and Dr. Jeffrey S. Sartin. The Board will not restate their specific qualifications. Their curriculum vitae are attached to their depositions. All three are well qualified internists who specialize in infectious disease. In general, Dr. Goodpasture concluded that the hepatitis C probably came from claimant's work at Riverside Hospital. Dr. Smith and Dr. Sartin both testified that one cannot say the hepatitis C was from exposures in the work claimant did for either respondent.

The Board has determined, based principally on claimant's testimony and the testimony by these three physicians, that claimant has not shown by a preponderance of the credible evidence that claimant's hepatitis C arose out of her employment for either respondent.

As indicated, only Dr. Goodpasture connected the hepatitis C to claimant's work. Dr. Goodpasture initially attributed the disease to claimant's contact with patient blood in general. When advised that claimant had later remembered a needle stick at Riverside, Dr. Goodpasture thought this a likely source. Dr. Goodpasture concluded claimant's infection was acute, recently contracted, and, based on the amount of time spent working for each respondent, more likely than not from the work at Riverside. Dr. Goodpasture relied primarily on several factors to justify this conclusion—the date of the onset of symptoms, the very high enzyme level coinciding with the symptoms, and the absence of other risk factors.

The Board has concluded these factors are not sufficiently persuasive to meet claimant's burden. First, the evidence in general persuades the Board that symptoms most often do not appear for years after the infection. This point does not appear in dispute, Dr. Goodpasture acknowledged this is true. Dr. Sartin testified that the average time between infection and onset of symptoms is ten years. Second, the evidence establishes that the high levels of enzymes can be explained by the medications claimant was taking, specifically Tylenol, Prozac, and Accutane. The fact that claimant's enzyme levels dropped in the fall of 1995 without treatment can also as easily be explained by the fact claimant stopped taking some of these medications.

Perhaps most importantly, the Board is persuaded by the testimony by Dr. Smith and Dr. Sartin about the significance of the liver biopsy done in August of 1996. Both testified the results of this biopsy, particularly the portal fibrosis, are indicative of a longstanding infection. Dr. Smith testified the biopsy suggested an infection had existed between 10 to 30 years. Although there are other possible explanations for the extent of the liver damage, including some of the medications claimant took, none appear more likely than the possibility of a longstanding hepatitis C infection. The evidence does not, for example, suggest claimant had been taking the medications for a long time or, for that matter, that the medications caused the portal fibrosis, only that they can damage the liver.

The record in this case indicates it is often difficult to identify either the cause or the approximate time of the onset of a hepatitis C infection. In this case claimant's history does not include some of the more common risk factors such as drug use or numerous sexual partners. On the other hand, the record suggests that working in contact with blood in a labor and delivery room is only a small risk factor, if indeed it is a risk factor. In reaching its conclusion, the Board has not discounted claimant's belated recollection of a possible needle stick in April or May of 1995. Claimant's testimony on this point seems credible. Still, nothing in the evidence suggests how likely it was that this needle had been used for a patient with hepatitis C, or, even if it had, that the use was sufficiently recent that the infection remained active. The Board does not believe this evidence, in context with the record as a whole, makes this event more probably than not the cause of claimant's infection.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).
2. The evidence in this case does not establish by a preponderance of the credible evidence that claimant's hepatitis C arose out of her employment for either respondent.
3. The Award by the ALJ should be affirmed and benefits denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish on June 18, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James R. Roth, Wichita, KS
Scott J. Mann, Hutchinson, KS
Vaughn Burkholder, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director